

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Conor O'Shea	Team: Squad #5	CCRB Case #: 202004111	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 05/28/2020 5:52 PM	Location of Incident: Union Square East and East 16th Street	Precinct: 13	18 Mo. SOL 11/28/2021	EO SOL 5/4/2022	
Date/Time CV Reported Wed, 06/03/2020 2:00 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 06/09/2020 2:00 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Damian Thomas	20149	949962	SRG 3

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Anthony Yovino	19828	955684	PBMS
2. DC James Mccarthy	00000	885671	PBMS
3. POM Angel Vazquez	29633	951374	SRG 3
4. POM Michael Guardino	23348	953934	SRG 1
5. POM Yuriy Demchenko	04740	946912	SRG 3
6. POM Christophe Havlik	14920	955976	073 PCT
7. POM Thomas Corcoran	28614	950238	DIS CTL
8. POM Erik Delgado	10112	936457	DIS CTL
9. POM Justin Barberi	25008	957356	SRG 5
10. SGT Kevin Mulhern	01965	948390	SRG 3
11. LT Peter Sotiriou	00000	924515	SRG 3
12. SGT Elias Vazquez	03818	949762	SRG 2
13. SGT Joshua Gregory	01456	949062	SRG 3
14. POM Omar Galindo	13717	943266	SRG 4
15. POM Nordwing Veszter	07357	952321	SRG 4
16. SGT Kerin Quinn	02406	954746	SRG 4
17. POM Gregory Ospedales	07938	952077	SRG 3
18. POM Brett Jackson	11084	951844	SRG 4
19. POM Oscar Wdowiak	12497	951424	DIS CTL
20. POM Scott Obenauer	23942	935422	SRG 4
21. POM Rudolph Rosado	09497	949910	DIS CTL
22. POM Jason Castillo	15434	948762	DIS CTL
23. POM Michele Radolovic	11672	930994	SRG 1

Witness Officer(s)	Shield No	Tax No	Cmd Name
24. POM Michael Davi	30875	940053	SRG 1
25. CPT Ronald Ramos	00000	935562	SRG 4
26. SGT Greg Sanfilippo	04210	947705	PBMS
27. COD Terence Monahan	00000	876747	CD OFF

Officer(s)	Allegation	Investigator Recommendation
A.POM Damian Thomas	Force: Police Officer Damian Thomas struck § 87(2)(b) § 87(2)(b) with a bicycle.	
B.POM Damian Thomas	Force: Police Officer Damian Thomas struck § 87(2)(b) § 87(2)(b) with a bicycle.	
§ 87(4-b), § 87(2)(g)		

Case Summary

On June 3, 2020, § 87(2)(b) filed this complaint online via the CCRB's website on behalf of herself and her sister, § 87(2)(b).

On May 28, 2020, at approximately 5:52 p.m., § 87(2)(b) and § 87(2)(b) were at a Black Lives Matter protest by Union Square Park in Manhattan. At East 16th Street and Union Square East, Deputy Chief (DC) James McCarthy of Patrol Borough Manhattan South (PBMS) fell to the ground while attempting to apprehend an unidentified protester. Police Officer Damian Thomas of SRG 3 pushed § 87(2)(b) with his bicycle, knocking her and § 87(2)(b) backwards and to the ground (**Allegations A–B: Force**, § 87(2)(g)). PO Thomas continued pushing his bicycle into the crowd and struck § 87(2)(b) in the eye with the handle of his bicycle (**Subsumed within Allegation A**). § 87(2)(g), § 87(4-b)

§ 87(2)(b) and § 87(2)(b) were not arrested or issued any summonses.

The investigation obtained cell phone footage from § 87(2)(b) (**Board Review 01–02**, summarized at **Board Review 03**), § 87(2)(b) videos from freelance photojournalist § 87(2)(b) (**Board Review 04–05**, summarized at **Board Review 06**), a § 87(2)(b) video (**Board Review 07**, summarized at **Board Review 08**), and BWC videos (relevant videos at **Board Review 09–13**, summarized at **Board Review 14–18**). All references to video evidence in this report refer to the time stamp in the video player, not any on-screen clock embedded in the video itself.

The investigation was delayed by the NYPD Legal Bureau's inability to provide complete and accurate responses to requests for BWC footage. This required the investigation to send repeated requests for footage in this case and related cases to ensure receipt of all relevant footage.

Findings and Recommendations

Allegation A—Force: Police Officer Damian Thomas struck § 87(2)(b) with a bicycle.
Allegation B—Force: Police Officer Damian Thomas struck § 87(2)(b) with a bicycle.

It is undisputed that PO Thomas pushed § 87(2)(b) with his bicycle after DC McCarthy fell to the ground while trying to apprehend an unidentified male protester. The manner in which PO Thomas used his bicycle, and the effect it had on § 87(2)(b) and § 87(2)(b) remains in dispute.

None of the footage provided a perfectly comprehensive view of this incident overall or how PO Thomas used his bicycle in particular. Relevant videos include BWC footage from PO Guardino at **Board Review 09**, between 34:45 and 35:47, also available as a subclip of that portion at **Board Review 19**; BWC footage from Sgt. Gregory at **Board Review 13**, between 05:00 and 05:52, also available as a subclip of that portion at **Board Review 20**; BWC footage from PO Yovino at **Board Review 10**, between 05:25 and 05:58, also available as a subclip of that portion at **Board Review 21**; and § 87(2)(b)'s cell phone footage at **Board Review 01**.

In the aggregate, the relevant footage listed above shows the following. § 87(2)(b) (dressed in light blue jeans and a black jacket with a black backpack) and § 87(2)(b) (with bright blonde hair, holding a sign, the back of which is yellow with red lettering) walked peacefully with the protest as it moved south along the sidewalk from East 17th Street and Union Square East towards East 16th Street. At East 16th Street, DC McCarthy attempted to grab and arrest an unidentified male protester, at which point civilians in the crowd started screaming. Some protesters pulled the protester DC McCarthy had tried to arrest away from DC McCarthy. PO Thomas was biking down Union Square East as this happened—he dismounted, picked up his bicycle, and entered the crowd.

The footage further shows that DC McCarthy fell to the ground at the curb, with § 87(2)(b) and § 87(2)(b) a few feet away from him and § 87(2)(b) standing behind § 87(2)(b). § 87(2)(b) PO Yovino yelled for protesters to “get back.” Almost immediately after DC McCarthy fell, officers in business suits stood between him and the protesters. DC McCarthy stood up almost

immediately after falling. PO Thomas almost immediately pushed his bicycle into § 87(2)(b) § 87(2)(b) at least once, and at least moved her backwards somewhat. At the time he did so, § 87(2)(b) § 87(2)(b)s arms were clutched in front of her chest. No civilians struck officers with skateboards, bicycles, or any other objects, nor did any of them attack officers or otherwise physically interfere with the arrest.

§ 87(2)(b) § 87(2)(b) provided consistent testimony in her online complaint (**Board Review 23**) and in her CCRB interview (**Board Review 24**). Her testimony was generally consistent with the video footage described above. She recounted that, after DC McCarthy fell, PO Thomas lifted up his bicycle and pushed it into the crowd approximately two times. This pushed § 87(2)(b) § 87(2)(b) backwards into § 87(2)(b) § 87(2)(b) and caused both of them to fall to the ground. PO Thomas continued pushing his bicycle into the crowd multiple times after they fell. On one of those pushes, the tip of PO Thomas' bicycle handle jabbed § 87(2)(b) § 87(2)(b) in the left eye. In her website complaint, § 87(2)(b) § 87(2)(b) wrote that it felt like PO Thomas had "punched [her] in the eye with his bicycle." Her eye felt "wet" immediately. The wetness was from her eyes watering with tears.

When the tip of PO Thomas' bicycle handle struck § 87(2)(b) § 87(2)(b) in the eye, it caused small lacerations to her left eyelid which did not require stitches, and bruising and swelling to the area around her left eye. The swelling began almost immediately and lasted for a few days.

§ 87(2)(b) § 87(2)(b) provided photographs of these injuries (**Board Review 25–26**). The photograph in **Board Review 25** was taken at the incident location, almost immediately after the incident occurred. § 87(2)(b) § 87(2)(b) did not sustain any impairment of her vision. She did not seek or obtain medical treatment for these injuries because she did not feel it was necessary and also because she did not have health insurance.

§ 87(2)(b), § 87(2)(g)

Freelance photojournalist § 87(2)(b) § 87(2)(b) was standing near § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b) when this incident occurred. § 87(2)(b) § 87(2)(b) did not know § 87(2)(b) § 87(2)(b) § 87(2)(b) the unidentified protester DC McCarthy tried to arrest, or any of that protester's companions. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) § 87(2)(b) (**Board Review 28**) recounted that besides pulling the unidentified male protester away from DC McCarthy, no civilians struck any officers or otherwise physically interfered in the arrest. § 87(2)(b) § 87(2)(b) remembered at least some bicycle officers "attacking" protesters, but he could not remember the specifics of how any of them did so. He recalled that some protesters fell to the ground. The officers moved the crowd backwards to the park's edge. Some protesters then climbed the park's retaining wall. At this point, but at no point sooner, some of the protesters became violent and threw objects at the police.

PO Thomas (**Board Review 29**) first provided CCRB testimony just over three months after this incident. All that PO Thomas independently remembered of this incident was that officers made arrests at East 17th Street and Union Square East before the protest moved south on Union Square East, along the park's eastern edge. He did not independently remember having any interactions with § 87(2)(b) § 87(2)(b) or § 87(2)(b) § 87(2)(b) even after reviewing a photograph of them marching nearby (**Board Review 30**, showing § 87(2)(b) § 87(2)(b) on the far right and § 87(2)(b) § 87(2)(b) in the center). However, after reviewing a portion of PO Yovino's BWC (see subclip at **Board Review 22**), PO Thomas identified himself as being present for this incident and depicted in this video. PO Thomas eventually acknowledged that he used his bicycle to push the crowd backwards. PO Thomas attributed his lack of a clear memory of this incident to the fact that there were several similar incidents during the Union Square protests on May 28, 2020, as well as during the nearly constant protest assignments that he worked in the months after this incident.

PO Thomas denied striking any civilians with his bicycle. Instead, he was "guiding people back" with his bicycle and pushing them with the bicycle in the same way he would with a baton

held horizontally in two hands. He held his bicycle at about “mid-chest level.” PO Thomas described this technique as one he learned during general NYPD bicycle officer training, and also during crowd control training specifically designed for SRG bicycle officers. PO Thomas used this technique solely to move the crowd backwards and away from where DC McCarthy fell.

PO Thomas denied that his bicycle handle could ever have hit § 87(2)(b) § 87(2)(b) in the eye, solely because his bicycle would never come up as high as her face level. During this portion of the incident, protesters were “very violent,” insofar as they were hitting police with skateboards and bicycles, and also physically attempting to “de-arrest” suspects. PO Thomas denied that any protesters fell to the ground when he was pushing them with his bicycle. PO Thomas also denied seeing any civilians fall down in the immediate vicinity around him during that time.

However, a video § 87(2)(b) posted to § 87(2)(b) recorded immediately after PO Thomas finished pushing protesters with his bicycle, shows that at least some protesters—including § 87(2)(b) § 87(2)(b) —did fall to the ground. At the very beginning of § 87(2)(b) § 87(2)(b) video (**Board Review 04**), § 87(2)(b) § 87(2)(b) (identifiable by her bright blonde hair and black backpack) helps § 87(2)(b) § 87(2)(b) (identifiable by her light blue jeans and black jacket) off of the ground and into a standing position. See **Board Review 31** for a screenshot of the first frame of this video. The screenshot shows that at least § 87(2)(b) § 87(2)(b) was on the ground, several feet farther into the sidewalk than where she was standing when PO Thomas first pushed her with the bicycle.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

NYPD Patrol Guide Procedure 221-01 states, “Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances.” The reasonableness of a use of force is analyzed “from the perspective of a member with similar training and experience placed into the same circumstances as the incident under investigation” (**Board Review 32**).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first and only CCRB complaint in which either § 87(2)(b) or § 87(2)(b) has been involved (**Board Review 34–35**).
- PO Thomas has been a member of service for nine years and has been named a subject in one other CCRB complaint and one other allegation, which was not substantiated. PO Thomas' CCRB history does not reflect any apparent patterns relevant to this investigation.

Mediation, Civil and Criminal Histories

CCRB Case # 202004111

- This case was not suitable for mediation.
- As of October 9, 2020, the NYC Comptroller's Office had no record of any Notice of Claim regarding this incident (**Board Review 36**).
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
- According to the OCA, § 87(2)(b) [REDACTED] § 87(2)(b) [REDACTED] has no history of convictions in New York City (**Board Review 38**).

Squad No.: #05

Investigator:	<u>Conor Seamus O'Shea</u>	<u>Investigator Conor O'Shea</u>	<u>November 10, 2020</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Daniel Giansante</u>	<u>IM Daniel Giansante</u>	<u>November 11, 2020</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date